
(2005) 06 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 3564 of 2004

Sonibai Nathu Kuwar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 09-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(9)

Penal Code, 1860 (IPC) — Section 354

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 10(3)

Citation : (2005) 4 ALLMR 953 : (2005) 6 BomCR 261 : (2005) 3 MhLj 1100

Hon'ble Judges : Dalveer Bhandari, C.J;N.H. Patil, J

Bench : Division Bench

Advocate : N.B. Suryawanshi, for the Appellant; S.K. Kadam, Assistant
Government Pleader for Respondents Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner filed Original Application No. 1 of 2003 before the Maharashtra Administrative Tribunal, Aurangabad, challenging a transfer order from Bopkhel to Sukrapur.

2. The petitioner contended that she was the victim of sexual harassment by the Head Master, one Primary Teacher and Watchman of the Ashram School, where she was working. The petitioner complained to the superiors in respect of the same in April, 2002, and the petitioner proceeded on medical leave in the month of July, 2002. Despite the petitioner's complaints, the superior authorities did not take any cognizance of the complaints preferred by the petitioner. She ultimately lodged a complaint with the police station on 18th September, 2002. On the basis of the complaint lodged by the petitioner, an offence punishable u/s 354 of the Indian Penal Code and Section 10(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and Crime No. 60 of 2002 were registered by the police authorities. The petitioner was being pressurised by her superior officers for withdrawal of the said complaint. The petitioner, however, did

not succumb to the pressure and the police authorities have now filed a charge sheet in the said crime against three persons. The petitioner contended that when the petitioner was subjected to sexual harassment, instead of transferring them, the petitioner has been victimised by ordering her transfer.

3. When the matter came up before the Tribunal on 13th January, 2003, the Tribunal was pleased to grant status quo.

4. On 3rd July, 2003, the Tribunal, by its order, was pleased to dismiss the original application and vacated the status quo order granted on 13th January, 2003.

5. The petitioner was aggrieved by the order of transfer, and filed the petition against her transfer. The petitioner is aware that transfer is an incidence of service. The Courts and Tribunals have a very limited role of interference, except when, the transfer is against statutory rules or actuated by malice. The petitioner has no grievance by that part of the Tribunal's order by which her application against the transfer order was rejected. The petitioner is aggrieved by that part of the order by which the Tribunal made totally uncalled for observations, which were not necessary for deciding the petition filed by the petitioner. In order to properly comprehend the grievance of the petitioner, the observations, which the Tribunal has incorporated in the order, are reproduced hereinbelow :--

"The allegations made in the complaint dated 21-10-2002 (page 41) are of serious nature. However, I feel that such allegations involve the credibility of the applicant herself. She contended that the offenders were outraging her modesty. They were catching her cloths. They went to such extent that they were touching her chest and keeping their head on the chest. Without making any more comments, I only express that the things speak by themselves. No Indian woman, when she has not been a willing party, would allow a third person to keep his head on her chest. The grounds made out by the applicant do not appear to be convincing and to attribute her transfer to have been activated by mala fides or by any ulterior motive."

6. According to the petitioner, the aforesaid observations are totally unwarranted, and these observations are directed against the character of the petitioner. The petitioner submitted that the Tribunal has drawn unwarranted inferences which are not necessary for the decision of the matter and the same have cast a shadow of doubt on the character of the petitioner. The petitioner has approached the Court for expunging these remarks from the judgment of the Tribunal. Since the said remarks are not justified in the facts and circumstances of the case, the same are not necessary for adjudication of the petitioner's transfer application.

7. According to the petitioner, by making the above observations, the Tribunal has departed from the well known norm of sobriety, moderation and reserve, and made observations which were wholly unwarranted, uncalled for and untenable. Apart from that, the observations have direct reflection on the character of the

petitioner and are likely to have impact on the pending criminal case.

8. The petitioner submitted that the Tribunal passed these remarks without there being any material on record. The petitioner is also apprehensive that the Tribunal's remarks may affect the criminal prosecution launched by the petitioner against the accused. The petitioner also made grievance that the investigating agency has conducted the investigation into the allegations levelled by the petitioner against the persons, who were causing sexual harassment of the petitioner, and the charge sheet is filed, and the matter is pending adjudication before the Criminal Court. In view of this development, the Tribunal was wholly unjustified in passing such remarks in the impugned judgment dated 3rd July, 2003.

9. The petitioner submitted that she was not paid her salary for the period 24th July, 2002 till 18th July, 2003. In order to support her family, she had to incur hand-loans. It is submitted that the petitioner had joined at the new place where she started getting her salary.

10. The petitioner has prayed as under :--

"to issue appropriate writ, order or direction in the nature of Writ of Certiorari thereby directing to expunge the remarks contained in paras 13 and 14 of the impugned judgment."

11. In this order, our endeavour would be to evaluate and examine whether the Maharashtra Administrative Tribunal, Bench at Aurangabad, was justified in making the observations and comments regarding the petitioner's character and to what extent the comments were justified. The petition pending adjudication before the Tribunal was regarding validity of the transfer order. The Tribunal chose to dismiss the petitioner's application against the transfer order. In compliance with the order of the Tribunal, the petitioner had joined at the transferred place. The petitioner has no grievance as far as this part of the judgment is concerned, but while dismissing the transfer application, the Tribunal has made totally uncalled for and unwarranted remarks against the petitioner which were not at all necessary for deciding the said transfer petition. It is submitted by the learned counsel for the petitioner that the observations and remarks made by the Tribunal may have impact on a pending criminal case filed at her behest. In this view of the matter, whether those offending observations deserve to be expunged? We would like to draw light and to take assistance of decided cases of the Apex Court.

12. Their Lordships of the Supreme Court in the case of The State of Uttar Pradesh Vs. Mohammad Naim, had laid down some parameters and norms which should be followed while making general observations and personal remarks in the judgments.

"It is a principle of cardinal importance in the administration of justice, that the proper freedom and independence of Judges and Magistrates must be maintained

and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody even by the Supreme Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint.

It is not infrequent that sweeping generalization defeats the very purpose for which they are made. It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them. It is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. It has also been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

13. In an another leading case in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, , the Supreme Court observed thus :

"We may observe in conclusion that Judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognize that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice."

14. We may also refer to another decision of the Apex Court in the case of A.M. Mathur Vs. Pramod Kumar Gupta, , wherein the Apex Court has held as under :

"Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect; that is, respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the State, the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the Judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

15. In the said decision, the Apex Court has also observed that Judges have the absolute and unchallengeable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. The Court further observed that concededly the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that

derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct.

16. In yet another case of similar nature, Their Lordships of the Apex Court in the case of *Niranjan Patnaik Vs. Sashibhusan Kar and Another*, , again reminded that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be. The court again reiterated the settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct.

17. In this judgment, we are attempting to reiterate and restate some of the basic features and aspects which should be borne in mind by the Judicial officers, and members of the Tribunal while framing or constructing the judgments and orders.

17.1. No exact instructions could be given as to how the judgment/order is to be prepared. A judgment is the expression of the opinion of a Judge or Magistrate arrived at after due consideration of the evidence and of the arguments, if any, advanced before him. There are no rules, norms or style of universal application for writing or framing of judgments. Section 2(9) of the CPC defines a judgment as (a) "statement given by the Judge on the grounds of a decree or order". The Criminal Procedure Code does not define a judgment. In Halsbury's Laws of England the expression has been understood to mean an order in a trial, terminating in the conviction or the acquittal of the accused and this interpretation has been accepted by the Indian Courts.

17.2. Every Judge or Judicial Officer has his own style of writing judgments. They have to express themselves about the cases which come up for decisions before them in their own style. Cases which come up for decision in different courts are also of such various types and have so many peculiarities of their own, that it is almost impossible to lay down how and in what manner the Judge or the Magistrate should express himself. Some of the basic features and characteristics of the judgment which the Judicial officer should bear in mind are briefly set out as under.

17.3. The judgment should ordinarily contain (a) statement of facts, (b) points in dispute, (c) findings on points in dispute on the basis of evidence and documents; and (d) reasons for granting or refusing order/relief.

17.4. Emotion has no place in a judgment which has to be based on facts as presented by the parties in the evidence, oral or documentary. Anything which directly or indirectly aggravates the emotion definitely induces an element of perversity.

17.5. The Court should abstain from harsh or ungenerous criticism of measures

taken in good faith by those who bear the responsibility of the Government.

17.6. A judgment must be calm and balanced and neither should it show prejudice nor sympathy. There should never be any display of emotions or sentiments in the judgment. A Judge neither rewards virtue nor chastises vice. He only administers even-handed justice between man and man and between a citizen and the State. This cardinal principle should always be remembered while constructing a judgment or the order.

17.7. Judicial Officers should not make sweeping remarks of general nature about any class of people - women, lawyers, politicians, businessmen, landlords, tenants, doctors, moneylenders, policemen, etc. etc.

17.8. The pen of the Judge should be just like the knife of a surgeon which probes into the flesh only inasmuch as it is absolutely necessary for the purpose of the case before it. Disparaging remarks which are not unwarranted by evidence against a person should never be made.

17.9. A judgment should not be based on conjectures and surmises or personal knowledge. It should be based on proper appreciation of evidence on record.

17.10. The language of the judgment should be sober, dignified, restrained and temperate and in no case satirical or factious. Judicial officers should see that their pronouncements are judicial in nature and do not normally depart from sobriety, moderation and reserve. They should refrain from being sarcastic in their judgments. They should try to avoid expressions which may attract a comment that the Judge had either made up his mind even before he initiated proceedings or had identified himself with a case to an extent that he was unable to appreciate the case or weigh the evidence before him impartially and without any basis.

17.11. The Courts and Tribunals must refrain from making any observation and remarks regarding personal characters of individuals, particularly of women, unless it is absolutely imperative in deciding the case.

18. When we apply the well settled principles culled in various pronouncements of the Apex Court, then the conclusion becomes irresistible that the learned Tribunal has made uncalled for and unjustified remarks against the petitioner. Those remarks have reflection of character of the petitioner and may have an impact on the criminal case pending. In our considered view, the remarks made by the learned Tribunal are totally uncalled for, unwarranted and unjustified. These remarks are accordingly expunged.

19. This writ petition is accordingly allowed and disposed of. No costs.